



DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 8, 17, and 35

[FAC 2019-02; FAR Case 2018-015; Item II; Docket No. 2018-0015; Sequence No. 1]

RIN 9000-AN74

Federal Acquisition Regulation: Governmentwide and Other Interagency Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement a section of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 that removes the requirement to make a best procurement approach determination to use an interagency acquisition.

DATES: Effective Date: **[Insert date 30 days after date of publication in the FEDERAL REGISTER].**

FOR FURTHER INFORMATION CONTACT: Ms. Zenaida Delgado, Procurement Analyst, at 202-969-7207 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat

Division at 202-501-4755. Please cite FAC 2019-02, FAR Case 2018-015.

SUPPLEMENTARY INFORMATION:

I. Background

Section 875 of the John S. McCain NDAA for FY 2019 (Pub. L. 115-232) amended section 865 of the Duncan Hunter NDAA for FY 2009 (Pub. L. 110-417) to remove the requirement for agencies to make a determination that the use of an interagency acquisition represents the best procurement approach. The determination is required prior to requesting another agency conduct an acquisition on its behalf, and before placing an order against another agency's indefinite-delivery contract vehicle. This requirement was implemented in FAR 17.502-1(a). The removal of the determination requirement as stated in section 865 will be implemented by the removal of the requirement at FAR 17.502-1(a) and references to the requirement in FAR parts 4, 8, and 35.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-shelf Items

This rule does not add any new solicitation provisions or contract clauses, or impact any existing solicitation

provisions or contract clauses. It does not add any new burdens.

III. Publication of this final rule for public comment is not required by statute

The statute that applies to the publication of the FAR is the Office of Federal Procurement Policy statute (codified at Title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it only removes a requirement for agencies to make a specific determination prior to utilizing a certain contracting method. The removal of this requirement only affects the internal operating procedures of the Government.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available

regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to this rule, because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section III. of this preamble). Accordingly, no regulatory flexibility analysis is required and none has been prepared.

VII. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 4, 8, 17, and 35

Government procurement.

Dated: March 19, 2019.

William F. Clark,
Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 4, 8, 17, and 35 as set forth below:

1. The authority citation for parts 4, 8, 17, and 35 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 4—ADMINISTRATIVE MATTERS

4.603 [Amended]

2. Amend section 4.603 by removing from paragraph (c) “(see 17.502-1(b)(1))” and adding “(see 17.502-1(a)(1))” in its place.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.404 [Amended]

3. Amend section 8.404 by removing the last sentence of paragraph (b)(2).

PART 17—SPECIAL CONTRACTING METHODS

17.502-1 [Amended]

4. Amend section 17.502-1 by removing paragraph (a) and redesignating paragraphs (b) and (c) as paragraphs (a) and (b) respectively.

PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

5. Amend section 35.017-3 by revising paragraphs (b)(1) and (2) to read as follows:

35.017-3 Using an FFRDC.

* * * * *

(b) * * *

(1) The nonsponsoring agency shall provide the documentation required by 17.503(e) to the sponsoring agency.

(2) When a D&F is required pursuant to 17.502-2(c), the nonsponsoring agency shall prepare the D&F and provide the documentation required by 17.503(e) to the sponsoring agency.

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Billing Code: 6820-EP

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